

**COUNTRYMAN & McDANIEL**

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HAAS INDUSTRIES, INC.

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO**

ONE BEACON INSURANCE COMPANY,	)	CASE NO. 3:07-CV-03540-BZ
a corporation,	)	
	)	<b>FINDINGS OF FACT AND</b>
Plaintiff,	)	<b>CONCLUSIONS OF LAW</b>
	)	
vs.	)	Pre-Trial: June 26, 2008
	)	Time: 4:00 p.m.
HAAS INDUSTRIES, INC., a	)	Trial: July 1, 2008
corporation,	)	Time: 9:00 a.m.
	)	Judge: Hon. Bernard Zimmerman
Defendants.	)	

1. At all relevant times defendant Haas Industries, Inc. was and is a cargo transportation and logistics company, authorized as a contract carrier by the Federal Motor Carrier Safety Administration.

2. On or about 30 June 2005, Omneon Video Networks ("Omneon") contacted Haas to arrange the transportation of computer components sold FOB origin to Professional Products Inc. ("PPI").

3. Haas issued its bill of lading covering the shipment.

1       4.     In keeping with the custom of the industry, Haas arranged  
2 for the transportation of the shipment by truck in conformity with  
3 its understanding with Omneon.

4  
5       5.     Haas' bill of lading set forth on its face page a  
6 conspicuous capitalized warning:

7  
8       DECLARED VALUE AGREED AND UNDERSTOOD TO BE NOT MORE THAN \$.50  
9       PER POUND PER PIECE, OR \$50.00 WHICHEVER IS HIGHER UNLESS  
10       HIGHER VALUE DECLARED AND CHARGES PAID. FREIGHT BILL SUBJECT T  
11       CONDITIONS SET FORTH ON REVERSE SIDE.

12  
13       To the left of the warning is a box marked "DECLARED VALUE FOR  
14 CARRIER \$ " with a blank space provided to set forth the value of  
15 the shipment. The Conditions of Contract Carriage on the reverse  
16 of the bill of lading again state the \$0.50 per lb. liability  
17 limitation "in the absence of a higher declared value for carriage"  
18 and that "[d]eclared values for carriage in excess of \$0.50 per  
19 pound, per piece, shall be subject to an excess valuation charge."

20  
21       6.     Beneath the declared value space is a space for  
22 "SHIPPER'S SIGNATURE," with the additional language in the  
23 signature box "FREIGHT BILL SUBJECT TO CONDITIONS SET FORTH ON  
24 REVERSE SIDE."

25  
26       7.     Omneon, the shipper, left the declared value box on the  
27 bill of lading blank. Haas' standard tariff, relevant to this  
28 shipment, was based upon geographic destination zone (one of three)

1 and cargo weight. This standard tariff was available to shipper  
2 customers and would have been provided to Omneon, but Omneon never  
3 requested this information.

4  
5 8. Effective January 17, 2005, the additional freight charge  
6 for declared value cargo became \$0.70 per each \$100 of the value  
7 declared.

8  
9 9. This additional freight charge was communicated to Haas'  
10 customers, including Omneon on or about January 20, 2005, by means  
11 of an explanatory "Dear Valued Customer" letter dated January 12,  
12 2005. It also would be disclosed to any customer who requested  
13 such information.

14  
15 10. Shippers, including Omneon, held blank Haas bill of  
16 lading forms and filled in relevant information for each shipment.

17  
18 11. For the shipment in suit, Omneon did not declare a value,  
19 but did sign the bill of lading in the space provided beneath the  
20 declared value space.

21  
22 12. Prior to the shipment in suit, Haas had arranged 156  
23 shipments on behalf of Omneon and 39 subsequently, all in 2005.

24  
25 13. For each 2005 shipment (195 shipments), Omneon had  
26 accepted Haas' terms and conditions as set forth on Haas' bill of  
27 lading, including the \$.50 per lb. or \$50 limitation, by either  
28 signing the bill of lading or by checking "accept" through Haas'

1 online order system.

2

3 14. Omneon did not declare a value or pay the additional  
4 "declared value" freight charge on any of its year 2005 shipments  
5 through Haas.

6

7 15. As to each shipment, the respective bill fo lading was  
8 issued before the shipment occurred.

9

10 16. A portion of the at issue shipment was lost in transit.

11

12 17. Omneon made a claim its name against Haas for the loss.  
13 PPI was not a party to the bill of lading and its name nowhere  
14 appears on the bill of lading.

15

16 18. The weight of the lost portion of the shipment was 176  
17 pounds.

18

19 19. Because no value had been declared and declared value  
20 freight had not been paid, Haas adjusted Omneon's claim upon the  
21 weight of the lost goods and Haas' limitation of \$.50 per pound, in  
22 the total amount of \$88.

23

24 20. Haas forwarded its \$88 check to Omneon, accompanied by a  
25 letter explaining the basis for the adjustment, including a  
26 conspicuous statement that the check constituted full settlement of  
27 the claim.

28

1 21. Omneon accepted the adjustment by endorsing the check.

2  
3 22. Omneon has not re-tendered the \$88.

4  
5 23. PPI had insured the shipment against loss or damage with  
6 One Beacon.

7  
8 24. Following presentation of a claim to One Beacon, One  
9 Beacon paid PPI the insured value of the loss goods in the sum of  
10 \$105,647 less a \$1,000 deductible.

11  
12 **CONCLUSIONS OF LAW**

13 1. This matter is governed by the Carmack Amendment, 49  
14 U.S.C. § 14706.

15  
16 2. The court has subject matter jurisdiction pursuant to 28  
17 U.S.C. §§ 1331 and 1337(a).

18  
19 3. One Beacon, as subrogee of a person not entitled to  
20 recover under the bill of lading, lacks standing to assert or to  
21 prosecute this action. *Polesuk v. CBR Systems, Inc.*, 2006 WL  
22 2796789 (S.D.N.Y. 2006).

23  
24 4. The bill of lading executed by the shipper without a  
25 value being declared constitutes an agreement by the shipper to  
26 accept the carrier's liability limitation of \$0.50 per pound. the  
27 information on Haas' bill of lading together with information  
28 available on request from Haas gave the shipper Omneon reasonable

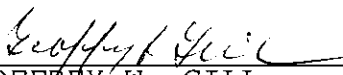
1 opportunity to choose between levels of liability offered by Haas.  
2 Haas' bill of lading was issued prior to the shipment. Haas'  
3 therefore is entitled to limit its liability to \$0.50 per pound.  
4 *Atlantic Mutual Ins. v. Yasutomi Warehousing and Distribution,*  
5 *Inc.*, 326 F. Supp.2d 1123 (C.D. Cal. 2004).

6  
7 5. Haas' adjustment with shipper Omneon constitutes an  
8 effective accord and satisfaction of the claim. *AXA S.A. v. Union*  
9 *Pacific Railroad Company*, 269 F. Supp.2d 863 (S.D. Tx. 2003)

10  
11 Dated: June 13, 2008

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15 By:

  
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